

# ARKANSAS SUPREME COURT

No. CR 06-518

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered      June 29, 2006

BOBBY POSEY  
Appellant

*PRO SE* MOTION FOR EXTENSION  
OF TIME TO FILE APPELLANT’S  
BRIEF [CIRCUIT COURT OF  
CRITTENDEN COUNTY, CR 96-661,  
HON. DAVID N. LASER, JUDGE]

v.

STATE OF ARKANSAS  
Appellee

APPEAL DISMISSED; MOTION MOOT

## PER CURIAM

In 1997, appellant Bobby Posey entered a plea of guilty to robbery and was placed on probation. In 2003, probation was revoked, and appellant was sentenced to ten years’ imprisonment. The Arkansas Court of Appeals affirmed the judgment rendered on revocation of probation. *Posey v. State*, CACR 04-610 (Ark. App. May 18, 2005). The mandate of the court was issued on June 7, 2005.

On May 27, 2005, eleven days before the mandate was issued, appellant filed in the trial court a *pro se* petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1, seeking to vacate or modify the judgment. The petition was denied, and appellant has lodged an appeal from that order in this court. He now seeks an extension of time to file the appellant’s brief.

As the Rule 37.1 petition was untimely filed, the appeal is dismissed. The motion is moot. This court has consistently held that an appeal from the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338

Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (*per curiam*); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (*per curiam*).

The Rule 37.1 petition was filed by appellant before the mandate following affirmance of the judgment was issued. As a result, the trial court did not have jurisdiction to consider the merits of the petition. A petition under Criminal Procedure Rule 37.1 must be filed *after* the mandate is issued because, when a judgment is appealed, the circuit court does not regain jurisdiction over the case until that event occurs. *Doyle v. State*, 319 Ark. 175, 890 S.W.2d 256 (1994) (*per curiam*); *see Clements v. State*, 312 Ark. 528, 851 S.W.2d 422 (1993).

Appeal dismissed; motion moot.